

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1000 OF 2006
 IN
 APPEAL FROM ORDER NO.697 OF 1997

Shri Ramesh R. Parekh ..Applicant.

V/s.

Manharlal U. Patel(Dismissed)
 & Ors. ..Respondents.

Mrs. A.S.Malvankar for applicant.

Mr.V.T.Lulia for Respondent.

CORAM: A.M.KHANWILKAR, J

DATE : MARCH 1, 2007.

P.C. :

1. Counsel for the respondent Nos. 3 and 4, the only contesting respondents in this application, as the application stands dismissed as against other respondents, would contend that since the petitioner has not taken steps to bring on record heirs and legal representatives of the deceased respondents, the suit has abated as a whole. Counsel for the petitioner on the other hand, would contend that the suit is filed against the respondents who are tenants in respect of separate premises occupied by them. Assuming that the suit is held to have abated, it would abate only in respect of the deceased

defendants whose heirs and legal representatives are not brought on record. However, suit against respondent Nos. 3 and 4 will have to proceed and cannot abate. There seems to be substance in the stand taken by the counsel for the petitioner. Thus understood, the present application, which is pursued only against respondent Nos. 3 and 4 will succeed in terms of prayer clause (1) and (2), as sufficient cause has been made out in the application for restoring the appeal from order to the file to its original number. Petition deserves to be restored in the interest of justice. Ordered accordingly.

3. As appeal from order pertains to 1997, the same be listed on 17th April, 2007 under caption "final hearing".

4. It is made clear that appeal will proceed only against respondent Nos. 3 and 4.